

October 9, 2015

Via ECF to

Hon. Alison J. Nathan
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Natural Resources Defense Council, Inc. v. Federal Emergency
Management Agency, Civil Case No. 15-cv-04765-AJN

Dear Judge Nathan,

This letter is in response to the Court's Notice of Initial Pretrial Conference, dkt. 9, directing the parties to submit a joint letter in advance of the initial pretrial conference, scheduled for 10:30 a.m. on October 23, 2015. Because Plaintiff Natural Resources Defense Council, Inc. (NRDC) brings this action pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we understand Local Civil Rule 16.1 to exempt it from the requirement of a mandatory scheduling order contained in Fed. R. Civ. P. 16(b). Accordingly, the parties respectfully request that they be relieved of their obligation under the July 8, 2015 Notice to submit a copy of the Court's Civil Case Management Plan and Scheduling Order, which we understand to be designed to fulfill that requirement.

Moreover, in the parties' view, no such scheduling order is needed because the parties expect that this case, like most FOIA cases, will be resolved through settlement or on cross-motions for summary judgment without the need for discovery. The Government plans to release documents responsive to NRDC's FOIA requests, and not exempt from disclosure, by October 30, 2015. The parties are hopeful that they will be able to reach a mutually acceptable agreement concerning any withheld documents soon thereafter. If not, the parties propose that cross-motions for summary judgment be filed by January 15, 2016, as noted below.

Below, we provide the information requested in the Court's July 8 Notice.

Hon. Alison J. Nathan
October 9, 2015
Page 2

1. Nature of the case and principal defenses

Plaintiff NRDC alleges that Defendant Federal Emergency Management Agency (FEMA) violated FOIA when it failed to timely disclose responsive records requested by NRDC relating to FEMA's implementation of the National Flood Insurance Program. Plaintiff seeks declaratory and injunctive relief, declaring that Defendant has violated FOIA and ordering that FEMA disclose the requested records to NRDC.

The Government has asserted the following defenses: that it has exercised due diligence in processing NRDC's FOIA requests and that exceptional circumstances exist that have necessitated additional time for the Government to process these requests; that some or all of the documents requested are exempt from disclosure; that the Court lacks subject matter jurisdiction over NRDC's requests for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552; and that Plaintiff is not entitled to declaratory relief.

2. Basis for subject matter jurisdiction and venue

This Court's jurisdiction in this action arises from 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). Venue is proper in the Southern District of New York because NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e)(1).

3. Motions

If the parties fail to reach a timely settlement, the parties anticipate filing cross-motions for summary judgment by January 15, 2016.

4. Discovery

The parties have not engaged in discovery and do not anticipate that any discovery will be necessary. However, Plaintiff reserves the right to take narrow discovery concerning any claims Defendant makes that its documents are exempt from disclosure. The Government asserts that discovery is not appropriate in this FOIA action, provided that the affidavits or declarations it submits are adequate.

5. Settlement discussions

The parties have not yet engaged in detailed settlement discussions. After the Government produces responsive documents to NRDC, the parties expect to

Hon. Alison J. Nathan
October 9, 2015
Page 3

discuss settlement concerning assertions that certain responsive documents are exempt from disclosure.

6. Estimated length of trial

The parties expect that this case will be resolved on cross-motions for summary judgment.

We thank the Court for its consideration of this matter.

Respectfully,

/s/ Joshua R. Purtle
Joshua R. Purtle
111 Sutter Street, 20th Floor
San Francisco, CA 94104
Tel: 415-875-6112
jpurtle@nrdc.org

*Counsel for Plaintiff Natural Resources
Defense Council*

PREET BHARARA
United States Attorney for the
Southern District of New York

By: /s/ Jacob Lillywhite (with permission)
Jacob Lillywhite
Assistant United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel: 212-637-2639
jacob.lillywhite@usdoj.gov

*Counsel for Defendant Federal Emergency
Management Agency*